K 1950.

Medical Practitioners
File No. II/50 (N)
Legal Department
B BRANCH

Subject:—.

Notifications under the Bombay Medical Practitioners Act, 1938

P=8.
E

Medical Practitioners II/50 (N)
File No.

Gen. 194 e.

380 B

Legal Department.

The proposal of L.I.S. & F.H.F. is to authorise the President of the Indian Systems of Medicine to exercise the powers under clause (a) only of section 13B of the Bombay Medical Practitioners Act, 1938. It will be observed from the provisions of section 13B that powers and functions under clauses (a), (b), (c), (d) and (f), which mainly pertain to the holding of examinations, are inter-dependent. The Remembrancer of Legal Affairs in his opinion No.1586, dated the 4th February 1950 at pages 7-11 ante has held as follows:-

> "Under section 22 of the Bombay Medical Practitioners Act, 1938, before it was amended by Bombay Act XXXIII of 1949, the power to hold ~~the~~ qualifying examinations vested in the Board. By the Bombay Amendment Act XXXIII of 1949 that power now vests in the Faculty, a body corporate under section 2(a). Consequently the power to hold examinations vests now in the Faculty and can no longer be exercised by the Board. The power to grant exemptions to students is incidental to the power of holding examinations and, consequently that power can also now be exercised only by the Faculty."

The powers specified in section 13B were formerly exercisable by the Board. According to the R.L.A's opinion referred to above all these powers are now exercisable by the Faculty. As the immediate need is to hold qualifying examinations referred to in section 13B it is necessary that all powers provided in clauses (b), (c), (d) and (f) which are relatable to the main functions of holding examinations should be exercised by the President of the Board and not only the powers specified in clause (a).

2. A revised draft notification is accordingly sent herewith. The L.I.S. & F.H.F. should specify the period upto which the powers shall be continued to be exercised by the President as required by section 31D.

Id/- J.R.D. 13/4
Additional Secretary to Government.

U.O. to L.I.S. & F.H.F., No.5047, dated the 13th April 1950.

NOTIFICATION.

Local Self Government and Public Health Department,
Bombay Castle, April 1950.

No. .- Whereas it appears to the State Government that the Faculty empowered to exercise the powers and perform the function under the Bombay Medical Practitioner's Act, 1938 (Bom. XXVI of 1938) has not been validly constituted.

Now, therefore, in exercise of the powers conferred by section 31D of the said Act, the Government of Bombay is pleased to direct that powers and duties of the Faculty under clauses (a), (b), (c), (d) and (f) of section 13) of the said Act shall be exercised and performed by the President during the period from - - - - - - to - - - - (both days inclusive).

By order of the Governor of Bombay,

Deputy Secretary to Government.

RAN/20-7.
4 c.

Local Department.

In order to facilitate the registration of refugee medical practitioners and of medical practitioners practising in the merged States, jurisdiction over which has been transferred to the Bombay Government under the Extra-Provincial Jurisdiction Act, 1947, the Bombay Medical Practitioner's (Amendment) Act, 1949 (Bom.XXXIII of 1949) has been enacted. Under the Bombay Medical Practitioners Act as now amended a Registration Tribunal has been constituted and under section 31-B the State Government has been empowered to appoint a date on or before which a medical practitioner above referred to has to make an application for having his name enrolled in the register or in the list. The entry in the register is to be entered if the applicant held a diploma of having passed any of the examinations specified in the Schedule and the entry in the list is to be made if the applicant had been in regular practice for a period of not less than five years preceding the date on which he made the application. As this Act was in force in the Idar State it is presumed that the persons falling under either of the classes of practitioners must have made applications to the Registration Tribunal. The Local Self Government and Public Health Department should ascertain whether such applications were made. If not, the only necessary step now to take is to appoint a fresh date under section 31-B in respect of Idar State area so as to facilitate the registration of practitioners.

Id/- J.R.D. 18/5
Additional Secretary to Government.

KAV/20-7.
4 c.

U.R. to L.S.G. & P.H.D., No.6746, dated the 17th May 1950.

Office of the R.L.A.

Bombay Medical Practitioners Act, 1938. Section 38(2): Empowering District Health officers under -

The proposal of the L.S.G. & P.W.D. to issue the notification at page 9 ante empowering the District Health Officers of the districts specified under sub-section (2) of section 38 of the Bombay Medical Practitioners Act, 1938, is not legally in order. Sub-section (3) of section 1 of the Act provides that Parts I and II of the Act shall come into force on such date as the State Government may by notification in the Offical Gazette appoint. That sub-section further provides that Part III shall come into force in all municipal, cantonment and notified areas in the State on the expiry of two years and in all other areas on the expiry of five years from the date on which Parts I and II come into force in the respective areas. Some of the Specified districts include the merged areas of States, and the question that arises for consideration is whether Part III of the Act can be said to have come into force in those areas so as to enable Government to issue the proposed notification under section 38 which occurs in the said Part III. It appears that no notification under sub-section (3) of section 1 bringing into force Parts I & II in the merged State areas has been issued by Government. Therefore, the position will be governed by section 3 of the Bombay Merged States (Laws) Act, 1950. Under sub-section (1) of section 3 of that Act read with clauses (a) and (b) of sub-section (3 of that section, all notifications issued under sub-section (3) of section 1 of the Bombay Medical

Practitioners Act, 1938, in respect of any local area, shall be deemed to extend to and be in force also in any area of the merged States which has been included in such local area under any law for the time being in force. Therefore, if Parts I and II of the Act have been extended to all the districts as they stood before merger, they will now with effect from 30-3-1950 be deemed to extend to those districts inclusive of the merged areas. As a result Part III of the Act will come into force after a lapse of two years or five years respectively, from that date according as the area is municipal, cantonment or notified area, or otherwise. The proposed notification can therefore be issued so far as merged areas are concerned only after the lapse of those periods. Even if notifications had been issued appointing dates for bringing into force Parts I and II in the merged State areas after the Act was applied to them, the same anomalous result would follow, since the requisite period of five years could not have lapsed. In either case the position would be unsatisfactory and intolerable for it will mean the existence of different laws for the different areas of a district. The best course would therefore be to make an amendment in the law in the first instance so far as merged areas are concerned doing away with the requirement of the lapse of the specified periods before Part III comes into force.

Id/- P.B.L. 1/6
Remembrancer of Legal Affairs.

KAH/20-7.
4 c.

U.R. to L.S.G. & P.H.D.No.7468, dated 2nd June 195[illegible]

Legal Department.

The proposal in this file is that the practitioners who have been registered under the Medical Practitioners' Act in force in any of the Merged States should be registered straight-away without their being asked to apply to the Registration Tribunal as was done in the case of the Baroda State by the amendment of the Bombay Medical Act, 1912 and Bombay Medical Practitioners' Act, 1938 in their application to the Baroda State (vide Order at p.30 ante). The second proposal is that those States which had no Medical Practitioners' Act and no Medical Councils constituted thereunder should be governed by the provisions of section 31A to 31C of the Bombay Medical Practitioners' Act, 1938.

2. To achieve the above object it is necessary -

(i) to amend the Bombay Medical Act, 1912, and the Bombay Medical Practitioners' Act, 1938, on the lines of the Order made in respect of the Baroda State at p.30 ante by an Act of the Legislature;

(ii) to amend the Bombay Medical Practitioners' Act, 1938, so as to show that sections 31A to 31C would apply only to these States in which there was not in force any enactment corresponding to the Bombay Medical Act, 1912 or the Bombay Medical Practitioners' Act, 1938.

Sd/- J.M.D. 11/7

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No. 5794, dated the 12th July 1950.

KAH/20-7.
4 c.

Legal Department.

The requisite draft notification is sent herewith.

2. The Bombay Merged States (Laws) Act, 1950, is a general enactment extending to the merged States various Central and Bombay Laws. Under Schedule III to that Act some of the Bombay Acts have been modified in their application to the specified merged States. When the Bombay Medical Practitioners Act is proposed to be modified in its application to merged States, the Department concerned with the working of that Act would be in the know of the objects and reasons therefor. Hence it is desirable that the Local Self Government and Public Health Department should undertake the legislation. The Political and Services Department has already informed all Departments that since the States have been completely integrated with the Province since 26th January 1950 in all respects, the legislation or other administrative measure in respect of any merged States should be dealt with by the Department concerned with the legislation.

12/8 J.P.D. 12/8

Additional Secretary to Government.

U.R. to L.S.G. & P.H.D. No.11552, dated the 14th August 1950.

NOTIFICATION.

Local Self Government and
Public Health Department,
Bombay Castle, August 1950.

The Bombay Medical Practitioners' Act, 1938.

No. .- In exercise of the powers conferred by sub-section (3) of section 1 of the Bombay Medical Practitioners' Act, 1938, the Government of Bombay is pleased to appoint

Date to be inserted by L.S.G. & P.H.D.

as the

on which Parts I and II of the said Act shall come into force in the following districts, namely:-

x x x x x x

By order of the Governor of Bombay,

Secretary to Government.

KAN/20-7.
4 c.

NOTIFICATION.

Local Self Government and Public Health Department,
Bombay Castle, January 1951.

Bombay Medical Practitioner Act, 1938.

No. In exercise of the powers conferred by the proviso to sub-section (3) of section 1 of the Bombay Medical Practitioner Act, 1938, (Bom. XXVI of 1938), the Government of Bombay is pleased to specify the

to be filled by the Department.

as the date on which Part III of the Act shall come into force in all merged States.

By order of the Governor of Bombay,

Deputy Secretary to Government.

KAV/20-7.
4 c.